Supreme Court, U.S.
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No. 98-1672

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1998

ROBERT E. MEADE,

Petitioner,

v.

PEP BOYS, MANNY, MOE & JACK, INC., et al.,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO THE COURT OF APPEALS OF MARYLAND

PETITIONER'S SUPPLEMENTAL BRIEF

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SUPPLEMENTAL BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

Pursuant to Rule 15.8 of the Rules of the Supreme Court of the United States, the Petitioner respectfully submits this supplemental brief in support of the Petition for Writ of Certiorari.

ARGUMENT

The issues presented in this petition need to be addressed since other litigants may be confronted with either accepting a settlement offer, which does not justly compensate them for their injuries, or have their case dismissed. There appears to be a conflict between the courts regarding the actions and limitations of the court in managing their caseload. There is no law which gives a court authority to suddenly pull a case away from a jury and force a settlement on its own terms, because the court is frustrated with the litigants or wants to relieve its caseload, as it did in this case. It cannot be conclusively determined from the record in this case how a jury would decide the issues that the court took it upon itself to resolve.

> "Under Maryland law, a trial court does not have the plenary power to force parties to engage in mandatory, binding alternative dispute resolution, no matter how desirable the court might consider settlement to be". Attorney General v. Johnson, 282 Md. 274, 439 U.S. 805 (1978).

The Petitioner wishes to advise this court of the following new cases and other intervening matters not available at the time of the last filing of his Petition For Writ of Certiorari. In the case, West v. West, No. 98-1767, the Supreme Court is being asked to resolve a similar issue as to

who may enforce a settlement. The Petitioner presents the following question for review:

> "Whether the Petition for Certiorari Should be Granted to Clarify Under What Circumstances a United States District Court May Summarily Enforce a Settlement Agreement When Disputes Exist With Respect to the Existence and/or Terms of the Agreement?" Petition for Writ of Certiorari, West v. West, No. 98-1767 page i.

This case involves the following:

> "The Parties Outline the Terms of a Proposed Settlement, Including Provision to Submit Disputes Regarding the Settlement to an Arbitrator. Stacey Asks the Arbitrator to Resolve a Dispute But Immediately Withdraws That Request and Insists That the Entire Case Proceed to Trial. The Arbitrator Nevertheless Proceeds to Consider the Dispute and Reaches a Decision. Stacey Now Decides the Arbitration was Proper and Moves for Enforcement of the Settlement and the Award. The District Court Ignores the Issues Related to the Settlement Agreement and Simply Confirms the Order of Arbitration. The Court of Appeals Affirms the District Court Decision". Petition for Writ of Certiorari, West v. West, No. 98-1767, pages 2-5.

The Petitioner, under his reasons for granting the petition on page 12, includes "summary enforcement of an alleged settlement is improper when there is a substantial factual dispute as to the terms of the settlement" and cites Murchison v. Grand Cypress Hotel Corp., 13 F. 3d at 1486.

However, there is a difference in the two cases. In West v. West, the assigned Arbitrator enforced the settlement. In the Petitioner's case, No. 98-1672, the circuit court judge, after making her own major changes, forced the Petitioner to either accept the settlement offer, which he had already

previously rejected or have his case dismissed, as a sanction for not being present at the September 9, 1996 trial even though his attorney was present and ready to proceed with the trial.

In another case Davis v. Syntex Laboratories Inc., No. 98-1313, one of the questions presented on page ii, question 4 in the Petition for Writ of Certiorari, is "Whether the trial court has the grant of authority to dismiss a cause of action as a sanction, when dismissal results in a denial of due process". This is a similar question presented by the Petitioner in case No. 98-1672 but with different wording. This case involves the following:

> "Petitioner filed the product liability suit complaining of injuries sustained as a result of taking a drug manufactured, designed, distributed, and marketed by the Respondents for the use of endometriosis in women. The Court ordered Petitioner to produce an expert report, explaining the causal connection between the drug and her condition. (App.4), within a limited time frame and early in the litigation. Upon Petitioner's inability to comply with said order, the trial court dismissed Petitioner's cause, with prejudice. (App.3)." Petition for Writ of Certiorari, Davis v. Syntex Laboratories Inc., No. 98-1313, pages 3 and 4.

In both this case and case No. 98-1672, the judges did not appear to consider alternatives to dismissal. Dismissal is a harsh sanction. The Petitioners' conduct is insufficient to support such a severe sanction.

The Petitioner in case No. 98- 1672, as the Petitioner in case No. 98-1313, was deprived of his day in court. " It is a fundamental tenet of American law that every individual is entitled to his or her day in court". Martin v. Wilks, 490 U.S. 755, 762 (1989). The Petitioner is still injured and his case should not have been dismissed because it deprived him of presenting his case before a jury where he could have proven his injury and asked for past, present, and future

compensation. "The right to be heard before being condemned to suffer grievous loss of any kind, even though it may not involve the stigma and hardships of a criminal conviction, is a principle basis to our society". Joint Anti-Fascist Com. v. McGrath 341 U.S. 123, 168 (1951). "State courts in civil actions must afford to each litigant a proper opportunity to present his evidence". Saunders v. Shaw, 244 U.S. 317, 319 (1917) Cf. Western & Atl. R. Co. v. Henderson, 279 U.S. 639 (1929); Armstrong v. Manzo, 380 U.S. 545 (1965); Mullane v. Central Hanover, Bank & Tr. Co., 339 U.S. 306 (1950).

The Supreme Court, in reviewing this case No. 98-1672, should find "Where, as here, a possible due process violation is apparent on the particular facts of a case, we are empowered to consider the due process issue". Wood v. Georgia 101 S. Ct. 1097 (1981).

CONCLUSION

For all the aforementioned reasons, and those previously set forth within his Petition for Writ of Certiorari and his Reply to Brief in Opposition, the Petitioner respectfully urges the Supreme Court of the United States to grant his Petition for Writ of Certiorari and reverse the order of the Court of Appeals of Maryland.

Respectfully submitted,

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